IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12625 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHOKHAR MAHMADHUSEN LALMAHMAD

Versus

DY. COLLECTOR

Appearance:

1. Special Civil Application No. 12625 of 2002

MR SL VAISHYA for Petitioner No. 1

MR MR MENGDEY, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 29/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226 and 227 of the Constitution of India, the petitioner has challenged

the legality and validity of the order passed by the State Government i.e. the appellate - authority dated 04.04.2001 in appeal no. 383 of 2000 in partly allowing the same by quashing and setting aside the order dated 29.1.2000 passed by the Dy.Collector, Stamp Duty Valuation, Palanpur by which the Dy.Collector, Stamp Duty Valuation has directed the petitioner to pay the amount of Rs.11,020/- by way of additional stamp duty and Rs.250/- by way of penalty.

#. The petitioner has purchased the property in question by registered sale deed dated 24.09.1999 and the same was presented before the Sub-Registrar, Deesa on the same date. It is the case of the petitioner that the petitioner had paid the stamp duty considering the market value prevailing at the relevant time i.e. Rs.18,000/-. As the Sub-Registrar, Deesa was of the opinion that the document is under valued and the stamp duty of the property in question is not paid properly, he referred the document to the Dy.Collector, Stamp Duty Valuation, Palanpur for determining the correct market value exercising the power under Section 32-A of the Bombay Stamp Act, 1958 ("the Act" for short). Notice under Rule 4 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 ("the Rules" for short) came to be issued on 22.12.1999 fixing the provisional market value of the property in question at Rs.93,700/-. The petitioner appeared before the Dy.Collector and filed his reply and objected considering the market value of the property in question at Rs.93,700/-. The Dy.Collector, Stamp Duty Valuation, by his order dated 29.01.2000 without discussing anything on merits, and without discussing the reply filed by the petitioner, determined the market value of the property in question at Rs.93,700/- and thereby directed the petitioner to pay the amount of Rs.11,020/- being deficit stamp duty and Rs.250/- by way of penalty.

#. Being aggrieved and dissatisfied with the order passed by the Dy.Collector, Stamp Duty Valuation, Palanpur dated 29.01.2000, the petitioner preferred appeal under Section 32-B of the Act before the Chief Revenue Controlling Authority, Gujarat State which was numbered as appeal no. 383 of 2000. It was contended on behalf of the petitioner that considering the location and situation of the property in question and considering the document with regard to the other land, the market value which is fixed by the Dy.Collector is arbitrary. Accepting the submissions made on behalf of the petitioner, the appellate authority partly allowed the appeal and quashed and set aside the order passed by the

Dy.Collector, Stamp Duty Valuation dated 29.01.2000 and determined the market value of the property in question at Rs.70,000/- and thereby directed the petitioner to pay the amount of Rs.7,700/- by way of additional stamp duty. Being aggrieved and dissatisfied with the order passed by the Chief Revenue Controlling Authority dated 04.04.2001 in appeal no. 383 of 2000, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

#. Mr.Vaishya, learned advocate appearing for the petitioner, has submitted that same illegality has been committed by the appellate authority which was committed by the Dy.Collector. He submitted that nothing has been discussed by the appellate authority as to on what basis the market value of the property in question has been fixed at Rs.70,000/-. He further submitted that as such the impugned order passed by the appellate authority determining the market value of the property in question at Rs.70,000/- is also arbitrary and non-speaking order. Under the circumstances, he requested to allow the present petition.

#. Mr.Mengdey, learned A.G.P. appearing on behalf of the respondents, has submitted that considering the submissions made on behalf of the petitioner, the appellate authority has determined the market value of the property in question at Rs.70,000/- and has, in fact, partly allowed the appeal by quashing and setting aside / modifying the order passed by the Dy.Collector, Stamp Duty Valuation, Palanpur.

#. Heard the learned counsel for the parties.

#. It is true that the appellate authority has partly allowed the appeal and modified the order passed by the Dy.Collector, Stamp Duty Valuation, Palanpur. However, considering the judgment and order passed by the appellate authority by which the appellate authority has determined the market value of the property in question at Rs.70,000/- nothing has been discussed and there is no basis mentioned as to on what basis the market value has been determined at Rs.70,000/-. Thus, the impugned order passed by the appellate authority as such is non-speaking order. No reasons have been assigned while determining the market value of the property in question at Rs.70,000/-. On this ground alone, the present petition is required to be allowed and the order passed by the Chief Revenue Controlling Authority dated 04.04.2001 in appeal no. 383 of 2000 is required to be quashed and set aside and accordingly the same is quashed and set aside.

The matter is remanded to the appellate authority i.e. Chief Revenue Controlling Authority to decide and dispose of the aforesaid appeal afresh on its own merits and in accordance with law after giving opportunity to the petitioner. It will be open for the petitioner to submit the additional evidence and/or documents in support of his submissions which may be considered by the appellate authority.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(M.R.Shah,J)

(pathan)